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2012 JUN 26 PM 12:32

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY

*Handwritten signature*

*Filed on Demand*

STEVEN AMES BROWN  
Entertainment Law 83363  
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Plaintiff in *pro se*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

STEVEN AMES BROWN,

Plaintiff,

v.

ANDREW B. STROUD, an individual  
and *dba* STROUD PRODUCTIONS AND  
ENTERPRISES, INC.

Defendant.

**CV12-5550**

CIVIL

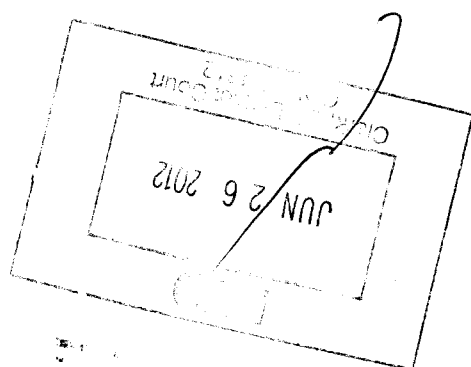
NOTICE OF  
MOTION TO COMPEL ATTENDANCE  
OF WALLY ROKER AT DEPOSITION  
AND FOR PRODUCTION OF ITEMS

*GW (AGRx)*

Date: to be noticed August 6, 2012

Time: to be noticed 8:30 A.M.

Judge: to be noticed



1 TO: WALLY ROKER AND ICU ENT. DIST., ALL PARTIES AND  
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE: that Plaintiff Brown hereby moves the above-noted Court  
4 for an order compelling Deponent Wally Roker an individual and *dba* ICU ENT. DIST. to  
5 appear at his deposition, be sworn and give testimony and to produce for inspection and  
6 copying those items specified in the subpoenas served upon him which have at any time  
7 since service thereof has been in his possession, custody and/or control.

8 Plaintiff Brown also seeks monetary sanctions against Deponent Wally Roker in the  
9 sum of \$3,032.00.

10 The motion is based on this notice, the accompanying memorandum and  
11 declaration of Steven Ames Brown as well as all such matter as may be presented to the  
12 Court before this motion is submitted.

13 After the Clerk assigns a case number and a judge to hear this motion, a notice of  
14 hearing shall be filed and served on Deponent Roker and all parties of record along with  
15 the accompanying documents.

16 Dated: June \_\_, 2012

17 Respectfully submitted,

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19 STEVEN AMES BROWN,  
20 Plaintiff in *pro se*  
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1 **STEVEN AMES BROWN**  
Entertainment Law 83363  
2 69 Grand View Avenue  
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4 sabrown@entertainmentlaw.com

5 Plaintiff in *pro se*  
6  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION  
11

12 STEVEN AMES BROWN,

13 Plaintiff,

14 v.

15 ANDREW B. STROUD, an individual  
and *dba* STROUD PRODUCTIONS AND  
16 ENTERPRISES, INC.

17 Defendant. /  
18 \_\_\_\_\_ /

CIVIL NO.

MOTION TO COMPEL ATTENDANCE  
OF WALLY ROKER AT DEPOSITION  
AND FOR PRODUCTION OF ITEMS

19 Date: to be noticed

20 Time: to be noticed

21 Judge: to be noticed  
22  
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## INTRODUCTION

This action is pending in the Northern District of California as Cv. 08-2348 JSW. During the course of discovery two subpoenas were issued for deponent Wally Roker, a resident of Los Angeles County. The subpoenas required Mr. Roker to submit to oral examination and produce various tangible items for inspection and copying. *Brown Declaration, Exhibit 2 and Exhibit 3.* The two subpoenas were duly served on Mr. Roker. *Brown Declaration, Exhibit 4 and Exhibit 5.*

Mr. Roker failed to appear. Instead he sent an email saying he was unavailable. *Brown Declaration, Exhibit 6.* Follow-up attempts to communicate with Mr. Roker and schedule a deposition at his convenience were ignored, and Mr. Roker never responded to the subpoenas or to follow-up communications, beyond his single email *Brown Declaration, ¶ 5.* Pursuant to Local Rule 37-1, a "meet and confer" demand was sent to Mr. Roker. *Brown Declaration, Exhibit 7.* Mr. Roker never responded to the demand. *Brown Declaration, ¶ 5.* Accordingly, pursuant to Local Rule 37-2.4, instead of being presented on a stipulation, this motion is brought in compliance with Local Rule 6-1, 7-9 and 7-10. As this motion is brought to enforce subpoenas issued through this Court in pursuit of an action pending in the Northern District of California, it is filed with a notice of motion, but without a notice of hearing because the Clerk does not assign a case number nor designate a judge until the motion is filed.<sup>1</sup> Upon the assignment of a case number and judge, Plaintiff will file and serve on Mr. Roker a *Notice of Hearing* along with the *Notice of Motion, Memorandum and Declaration of Steven Ames Brown.*

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<sup>1</sup> See, <http://www.cacd.uscourts.gov/court-procedures/filing-procedures/how-obtain-and-issue-out-district-subpoena> ("Should it become necessary to seek enforcement of the out-of-district subpoena, the moving party shall file with the Clerk a Motion to Enforce Subpoena upon which a civil case number and district judge will be assigned.")

1 GOOD CAUSE EXISTS TO COMPEL ATTENDANCE AND PRODUCTION

2 In the Northern District action, Plaintiff seeks a judicial declaration against  
3 Defendant Stroud concerning the ownership of common law copyrights in various sound  
4 recordings by the late artist Nina Simone. By counterclaims served by the Estate of Nina  
5 Simone ("Estate") against Mr. Stroud in the same action, the Estate seeks the return of  
6 Nina Simone personal property allegedly converted by Mr. Stroud.

7 Various discovery disputes arose among the parties as the action progressed over  
8 the next three years. Eventually Mr. Stroud was ordered by the Court to produce for  
9 inspection and copying hundreds of Nina Simone recordings and various other items  
10 pertaining to her. Rather than producing them, however, Mr. Stroud signed a contract with  
11 Deponent Roker purporting to transfer to him virtually the entire *res* of property in dispute.  
12 *Brown Declaration, Exhibit 1.* The Estate and Plaintiff promptly caused the two deposition  
13 subpoenas to be served on Mr. Roker (on his own behalf and on behalf of his fictitiously  
14 named business, ICU Ent. Dist.) commanding him to submit to examination and to  
15 produce for inspection and copying the disputed Nina Simone items purportedly  
16 transferred to him by Mr. Stroud pursuant to the sales contract.

17 Mr. Roker's testimony is critical because Mr. Stroud claims to have transferred to  
18 Mr. Roker physical possession of the disputed Nina Simone items. Although Mr. Stroud  
19 claims to have subsequently rescinded the contract and retrieved the items, this does not  
20 resolve chain of custody questions. More importantly, there are at minimum 51 boxes of  
21 analog Nina Simone recordings that are unaccounted for, items listed on the Stroud/Roker  
22 sales agreement as being physically transferred to Mr. Roker, but which have never been  
23 produced for inspection and copying by Mr. Stroud or anyone else.

24 F.R.Cv.P. 37(a)(2) provides that a "motion for an order to a nonparty must be made  
25 in the court where the discovery is or will be taken." Rule 37(b)(1) provides that if "the court  
26 where the discovery is taken orders a deponent to be sworn or to answer a question and

1 the deponent fails to obey, the failure may be treated as contempt of court." That rule  
 2 clearly contemplates that the court where the discovery to be taken has the power to  
 3 entertain a motion to compel a third-party deponent's attendance. Although Rule 45(e)  
 4 provides that the failure of a non-party to appear pursuant to a subpoena may be  
 5 punished as contempt, there is authority suggesting that Rule 37(a)(5) permits  
 6 reimbursement of expenses against a non-party on a separate motion to compel. *Cal.*  
 7 *Prac. Guide: Fed. Civ. Procedure Before Trial* (Rutter 2011) § 11:2460.

8 Plaintiff wishes to proceed by motion to compel and not by contempt and to obtain  
 9 reimbursement of travel expenses to attend the hearing, unless the Court permits a  
 10 telephonic appearance. While contempt proceedings are immediately available, the goal  
 11 is not to punish Mr. Roker, but to compel his attendance and production of the disputed  
 12 items. Plaintiff's sanction claim is set forth in the *Brown Declaration* at ¶ 6.

### 13 CONCLUSION

14 Mr. Roker was duly served with subpoenas regular on their faces. He failed to  
 15 appear, and he failed to produce for inspection and copying the items identified in the  
 16 subpoenas. An order should issue commanding Mr. Roker to personally appear at his  
 17 deposition and to produce for inspection and copying any items identified in the  
 18 subpoenas that were in his possession, custody and/or control as of the date of service, or  
 19 which have come into his possession, custody and/or control since that date.

20 Dated: June <sup>20</sup>\_\_, 2012

21 Respectfully submitted,

22   
 23 STEVEN AMES BROWN,  
 24 Plaintiff in pro se

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

**CV12- 5550 GW (AGR~~x~~)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input checked="" type="checkbox"/> ) STEVEN AMES BROWN	<b>DEFENDANTS</b> ANDREW B. STROUD, an individual and dba Andrew Stroud Productions and Enterprises, Inc.
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) STEVEN AMES BROWN, Atty 83363, 69 Grand View Avenue, San Francisco, CA 94114-2741; 415/647-7700; sabrown@entertainmentlaw.com	<b>Attorneys (If Known)</b> Bruce E. Methven, Atty 95486, 2232 Sixth Street, Berkeley, CA 94710; 510/649-4019

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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<b>V. REQUESTED IN COMPLAINT:</b> JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)	<input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$
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<b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Motion to compel enforcement of Central District subpoena, F.R.Cv.P. 37
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<b>VII. NATURE OF SUIT</b> (Place an X in one box only.)
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<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number:

**CV12-5550**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Francisco

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New York, New York

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved.**

**X. SIGNATURE OF ATTORNEY (OR PRO PER):** \_\_\_\_\_ Date 6/26/2012

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))